

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

*In re: Nexium (Esomeprazole Magnesium)
Antitrust Litigation*

This Document Relates to:

ALL ACTIONS

MDL No. 2409

Civil Action No. 1:12-md-02409-WGY

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' OBJECTIONS TO
FURTHER EXPERT TESTIMONY OF THOMAS G. MCGUIRE AND
PROPOSED DEMONSTRATIVES [ECF NO. 1225]**

Defendants have seriously mischaracterized Dr. McGuire's testimony and his demonstrative exhibits, all of which are taken directly from Dr. McGuire's report and all of which bear directly on critical issues in the case relating to the conspiracy among AstraZeneca, Teva and Ranbaxy.

Plaintiffs respectfully request the Court hold off on ruling regarding Dr. McGuire's proposed demonstratives until the testimony actually unfolds. The testimony will make clear that Dr. McGuire is using these demonstratives directly to elucidate the overall conspiracy among AstraZeneca, Ranbaxy, and Teva. We describe the demonstratives below.

Dr. McGuire's Demonstrative Exhibits

- Figure 4 from Dr. McGuire's August 23, 2013 Report shows the "Anticompetitive Range" between the "Anticompetitive negotiated entry date under settlement" and the "Competitive Standard: Expected date of generic entry (unobserved)." Dr. McGuire will use this demonstrative to explain that AstraZeneca and Ranbaxy pushed all potential generic entrants into the "anticompetitive" zone and *then took additional action to ensure that neither Teva nor any other later filer "broke the bottleneck."*

- Figure 2 from Dr. McGuire’s August 23, 2013 Report illustrates that AstraZeneca and Ranbaxy structured their agreement to maximize their joint profits. Plaintiffs expect Dr. McGuire to use this demonstrative to elucidate the Contingent Launch provisions of their agreement – provisions which on their face appear to potentially *accelerate* Teva’s entry – and thus to undermine – AstraZeneca and Ranbaxy’s joint profits, but that in fact promote those joint profits by *detering* Teva’s entry.
- Figure 3 from Dr. McGuire’s August 23, 2013 Report is a demonstrative graphic showing the “Profit Flows to Brand and Generic Agreeing on Generic Entry Date (Time T).” Plaintiffs expect Dr. McGuire to use this demonstrative to explain that the value to Ranbaxy of strengthening the bottleneck, through the Contingent Launch provisions, was greater than the value of earlier entry.
- Figure 5 from Dr. McGuire’s August 23, 2013 Report shows “AstraZeneca’s Gains and Losses from Settlement.” Plaintiffs expect Dr. McGuire to use this demonstrative to help explain AstraZeneca’s motive to establish the May 2014 entry date for all generics and to make that date stick.
- Likewise, Figure 8 from Dr. McGuire’s August 23, 2013 Report helps explain Ranbaxy’s motive for helping AstraZeneca to establish the May 2014 generic entry date and to make it stick by narrowing and strengthening the bottleneck.
- In the words of Dr. McGuire’s October 8, 2014 report, Figures 6 and 7 from that Report help establish that the AstraZeneca/Ranbaxy deal “was not a procompetitive compromise to settle a patent dispute, it was collusion.”

Conclusion

Plaintiffs ask that the Court deny defendants' motion to exclude Dr. McGuire's demonstratives or, in the alternative, defer ruling until the testimony unfolds.

Dated: November 13, 2014

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CERTIFICATE OF SERVICE

I, Thomas M. Sobol, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: November 13, 2014

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